IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14164 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJVIRSING JUJARSING SALUJA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 14164 of 2004

MR HR PRAJAPATI for Petitioner No. 1

MS HB PUNANI, AGP for Respondent No. 1-3

RULE SERVED BY DS for Respondent No. 1-2

MR JITENDRA MALKAN for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 24/12/2004

ORAL JUDGEMENT

1. Heard ld. counel Mr. Prajapati for the

petitioner detenu, ld. AGP Ms. HB Punani for respondent nos.1 to 3 and Mr. Jitendra Malkan, ld. Sr. Central Government Standing Counsel for respondent No.4 Union of India. Affidavit-in-reply filed on behalf of District Magistrate-Detaining Authority as well as on behalf of State of Gujarat, tendered by ld. AGP Ms. Punani are taken on record. In the same way, counter affidavit filed on behalf of Union of India tendered today by ld. Sr. Central Govt. Standing Counsel Mr. Jitendra Malkan is also taken on record.

2. By this petition under Article 226 R/w Articles 21 & 22 of the Constitution of India, the petitioner has challenged the legality and validity of the order of detention bearing No. FC/TAPAS/ ATK/SR.NO. 8/2004, dated 30.09.2004 passed by the District Magistrate, Ahmedabad, in exercise of the powers conferred on him by Section 3(2) of The Prevention of Black-Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as the "PBM Act").

3. The detaining authority while issuing order of preventive detention dated 30.09.2004, has recorded the grounds of detention and they are conveyed to the petitioner detenu when the order of detention under challenge came to be executed on the detenu on very same day i.e. on 30.09.2004. They are at Annex.B Page 19 to 30. It is alleged that the petitioner detenu is required to be detained preventing him from acting in any manner prejudicial to the maintenance of supply of essential commodities like petroleum product namely solvent and kerosene essential to the community and from the documents placed by the sponsoring authority, the detaining authority was convinced that it is necessary to detain the petitioner. The allegation against the present petitioner is that the office of Food & Civil Supply Controller of City of Ahmedabad raided on 26.03.2003 the premises known as "Goodluck Petroleum" located at 17, Ajanta -Ellora Complex, Galaxy Cinema Road, Naroda Road, Naroda, Ahmedabad where the father of the petitioner detenu was found dealing with retail business of kerosene and solvent. So, the other premises were also raided namely the residential premises situated at A/4, Anjanikrupa Society, Naroda Bethak, Naroda Road, Naroda, Ahmedabad as well as Shop No. 24, Indraprastha Shopping Centre, Galaxy Road, Naroda Road, Ahmedabad and from all the three premises, certain petroleum products like solvent and free-sale white kerosene was seized by the raiding party. From the the seizure of this material and from the statement of the father of the petitioner namely Jujarsingh Gurumukhsingh Saluja, recorded by the

officer, it is established that the petitioner is dealing in unauthorised and illegal activities of essential commodity like white kerosene, solvent and petroleum product and he was not holding any valid licence. The allegation against the petitioner is that this material was stored so that the same can be used in motor vehicle and other valuable products and the petitioner was found party in adulterating the petrol etc.. Adulterated petrol is undisputedly an activity prejudicial to the public safety and health and, therefore, it was found that the petitioner unless is detained under the order of preventive detention, he will continue with his illegal activities. The fact of registration of a criminal complaint by Sardarnagar Police Station being II.CR No.3254/2004 on 25.08.2004 wherein the petitioner detenu was arrested on 15.09.2004 and the fact of the order granting bail to the petitioner detenu by the competent Court on the very same day, are also other relevant circumstances which have been considered by the detaining authority while passing the order of preventive detention.

4. Without entering into any factual controversy, ld. counsel Mr. Prajapati has mainly assailed the order of detention on the grounds mentioned in the memo of the petition and while developing his arguments, ld. counsel Mr. Prajapati has concentrated his submissions on the point that the order of detention should be held unsustainable and atlest continued detention of the detenu should be turned down on the ground that written representation made by the present petitioner after execution of the order of detention has not been forwarded promptly and has not been considered promptly as required under the law and this has violated the privilege of the detenu flowing from Articles 21 & 22(5) of the Constitution of India. Developing this arguments, ld. counsel Mr. Prajapati has pointed out that the written representation dated 06.10.2004 sent through Regd.A.D. has reached to the office of the District Magistrate & Detaining Authority on 08.10.2004. This representation was required to be forwarded to the competent authority namely State Government and Central Government at the earliest in view of the fact that the order of detention was approved by the approving authority on 07.10.2004 i.e. within statutory period prescribed. When the order dated 30.09.2004 was approved on 07.10.2004, the detaining authority has become functus officio and, therefore, either on that very day or latest by the next day i.e. on 08.10.2004, representation could have been and should have been forwarded to the State Government as well as to the Central Government. It is

specifically stated that this representation was not forwarded till 15.10.2004 and, therefore, the detaining authority is under legal obligation to explain the time consumed in a satisfactory and convincing manner. Ld. AGP Ms. Punani has taken this court through relevant part of reply affidavit filed by the detaining authority and she has mainly referred para-10 thereof. For the sake of brevity and convenience, I would like to reproduce relevant part of para-10 herein below:-

"10. With reference to paras 4(g), (j) & (l) of the petition, I say that the representation dated 6.10.2004 was received by the Registry Branch on 08.10.2004 and since 9th & 10th October,2004 were public holidays being Second Saturday and Sunday, the said representation was received by the concerned branch on 13.10.2004 and it was sent to the Sponsoring Authority. Then necessary procedures were followed and the same was placed before me on 15.10.2004 and on receipt of the same, I have duly considered the fact that the order of detention was already approved by the State Government on 07.10.2004. Therefore the said representation was forwarded to the State Government, Central Government and to the Advisory Board on 15.10.2004 without delay. .....".

5. The above explanation if appreciated, the Court finds that there is force in the say of ld. counsel Mr. Prajapati for the detenu. It is true that the representation was received by the Registry Branch on 08.10.2004 and it is also true that 09.10.2004 and 10.10.2004 were non-working days being public holidays i.e. 2nd Saturday and Sunday. So, atleast, the representation could have been forwarded on 11.10.2004. So, the delay caused in forwarding representation between 11.10.2004 and 15.10.2004 if is found not explained satisfactorily, then on this sole ground, the order of detention and continued detention should be quashed. Though it is averred that the concerned Branch had received the representation on 13.10.2004 and it was sent to the Sponsoring Authority, but the Court is of the view that this is nothing but an attempt to explain the time spent between 11.10.2004 and 13.10.2004. As the order was approved by the authority on 07.10.2004, there was no scope for the detaining authority to enter into any exercise having become functus officio. Normally, the papers are not sent to the sponsoring authority unless some glaring facts or circumstances are noticed by the detaining authority under which the detaining authority

itself can recommend the case to revoke the order of detention to the competent authority namely the State Government or the Central Government. The affidavit is totally silent. Again, 14.10.2004 was working day and even then the representation was forwarded on 15.10.2004. So, the Court is convinced that the delay of 4 days caused in forwarding representation is not satisfactorily explained. The facts which need explanation, if not explained satisfactorily, shall have to be construed that they remained unexplained. Unconvincing explanation is not an explanation in the eyes of law and especially the Courts of the Country when are protecting jealously the interest of the detenu while carving out the law on the ground of preventive detention irrespective of the gravity of the allegations made against the detenu. In support of his submission, ld. counsel Mr. Prajapati for the detenu has rightly placed reliance on the following decisions:-

(1) Spl.C.A. No.1801/2004 decided on 01.07.2004 in the case of Manjuben, w/o Natwarbhai Jerambhai Koli Patel v/s Commissioner of Police. (Coram: Hon'ble Mr. Justice PB Majmudar)

(2) Spl.C.A. no.516/2004 decided on 08.07.2004 in the case of Vimalaben Arjunbhai Bhikhabhai Chunara v/s State of Gujarat. (Coram: Hon'ble Mr.Justice PB Majmudar)

(3) Spl.C.A.No. 17323/2003 decided on 17.03.2004 in the case of Jiteshbhai Gopalbhai Patel v/s State of Gujarat (Coram: Hon'ble Mr. Justice DP Buch).

6. In the case of Manjuben, w/o Natvarbhai (Spl.CA No.1801/2004) (supra), this Court, while referring to the decision of this Court in Spl.C.A. No. 9664/1999 decided on 16.03.2000 (Coram: Hon'ble Mr. Justice A.L.Dave) in the case of Mulshankar Kalyanbhai Jani v/s State of Gujarat, in para-6, has observed as under:-

" Having regard to the rival side contentions, the first factor that catches attention is the delay caused in forwarding the representation by the detaining authority. Admittedly, the representation made on behalf of the detenu was received on 16.11.1999. The detention was approved on 12.11.1999 and, therefore, the detaining authority was only expected to forward the representation to the State Government. The representation is forwarded on 18.11.1999. The detaining authority has not explained as at what point of time, the

representation was received on 16.11.1999 and how it was dealt with on 17.11.1999 and, therefore, taking a liberal view that the representation may have been received on 16.11.1999 by evening, then also, the time consumed in forwarding till 18.11.1999 remains unexplained i.e. there is no explanation coming forward as to what was done in respect of the representation on 17.11.1999. For this one day, probably, the representation remained unattended. This inaction and want of attention to the representation can be considered as sufficient to have infringed the right of the detenu of making an effective representation. .... ".

7. In view of above-stated settled legal position, delay caused in forwarding representation in the instant case is also fatal and on this sole ground, impugned order of detention requires to be quashed and set aside.

8. For the above reasons, the present petition is hereby allowed. Impugned order of detention bearing No. FC/TAPAS/ ATK/SR.NO.8/2004 dated 30.09.2004 passed by the District Magistrate, Ahmedabad against the detenu is hereby quashed and set aside and detenu Shri Rajvirsingh Juzarsingh Saluja is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute. Direct service is permitted.

[C.K. BUCH, J]

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